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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BURNING MAN PROJECT, FRIENDS OF
BLACK ROCK/HIGH ROCK, INC., FRIENDS
OF NEVADA WILDERNESS, SUMMIT LAKE
PAIUTE TRIBE OF NEVADA, GERLACH
PRESERVATION SOCIETY, and DAVID
JAMIESON, ANDY MOORE, WILL ROGER
PETERSON, Nanci Peterson, Jason
Walters, Dave Cooper, Margie
Reynolds, and Stacey Black, as
individuals,

Plaintiffs,

v.

The UNITED STATES DEPARTMENT OF THE
INTERIOR, BUREAU OF LAND
MANAGEMENT, BLACK ROCK FIELD
OFFICE, and DEBRA HAALAND in her official
capacity as Secretary of the Interior,

Defendants.

Case No.: 3:23-cv-00013-LRH-CSD

**JOINT CASE MANAGEMENT
REPORT AND BRIEFING
PLAN**

1. Statement of the Case

Plaintiffs Burning Man Project, Friends of Black Rock/High Rock, Inc., Friends of Nevada
Wilderness, the Summit Lake Paiute Tribe of Nevada, Gerlach Preservation Society, David

1 Jamieson, Andy Moore, Will Roger Peterson, Nanci Peterson, Jason Walters, Dave Cooper, Margie
2 Reynolds, and Stacey Black, filed their First Amended Complaint (Dkt. No. 31) on April 3, 2023,
3 seeking vacatur, and equitable, declaratory and injunctive relief under the Administrative
4 Procedure Act (APA), 5 U.S.C. §§ 701-706, Federal Land Policy Management Act of 1976
5 (FLPMA), 43 U.S.C. §§ 1701 *et seq.*, the National Environmental Policy Act (NEPA), 42 U.S.C.
6 §§ 4321 *et. seq.*, and the National Historic Preservation Act (“NHPA”), 54 U.S.C §§ 306108 *et seq.*,
7 and their implementing regulations and policies, challenging the decision of the United States
8 Department of the Interior (DOI) and its Bureau of Land Management (BLM) to approve a proposed
9 geothermal resource confirmation drilling project Operations Plan (“OP”) for Ormat Nevada Inc.,
10 26 LLC (“Ormat”). The approved action would allow Ormat to construct and maintain a geothermal
11 resource confirmation project in the Gerlach Geothermal Unit, which includes various leases held
12 by Ormat. Plaintiffs challenge the Final Environmental Assessment, Finding of No Significant
13 Impact, and Decision Record approving the Gerlach Geothermal Exploration Project (“Exploration
14 Project”) as issued by BLM’s Winnemucca District. Plaintiffs’ Complaint has three claims and
15 requests declaratory, injunctive other relief.
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18 DOI, BLM, the BLM Black Rock Field Office, and Debra Haaland, in her official capacity
19 as Secretary of the Interior, (collectively, “Federal Defendants”) assert that they complied with
20 FLPMA, NEPA, and the NHPA, as well as all relevant regulations and policies in approving the
21 Exploration Project. Federal Defendants also assert that confirming the viability of commercial
22 geothermal power production supports state and federal initiatives to expand development and use
23 of renewable energy resources and the Exploration Project is in conformance with applicable land
24 use plans.
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1 2. This is a suit pursuant to the APA, FLPMA, NEPA, and the NHPA. Jurisdiction over
2 this action is conferred by 28 U.S.C. §§ 1331 (federal question), 2201 (declaratory relief), and 2202
3 (injunctive relief).

4 3. The parties do not anticipate adding any additional parties. Plaintiffs reserve the right
5 to seek leave to amend their complaint based on the administrative record that will be produced by
6 the Federal Defendants.

7 4. Ormat's pending motion to intervene is the only outstanding motion.¹ On May 31,
8 2023, the Court ordered the parties to file a status report to address a recent decision by the Washoe
9 County Board of County Commissioners to rescind Ormat's permit. The parties will confer and
10 duly inform the Court of the permit rescission's impact on the status of this litigation by June 30,
11 2023.
12

13 5. There are no related cases.

14 6. Because this case is brought pursuant to the APA, it is exempt from the initial
15 disclosure requirements of FRCP 26. *See* FRCP 26(a)(1)(B)(i).

16 (a) Rule 26(f) initial disclosures are not applicable to this case.

17 (b) No discovery requests have been served, or are anticipated as part of the merits phase of
18 this case.
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20 (c) The parties do not anticipate any need for entry of a protective order.

21 (d) There are no issues or proposals relating to the timing, sequencing, phasing or scheduling
22 of discovery.
23

24 (e) The parties do not anticipate the need for discovery, whether inside or outside the District
25 of Nevada.
26

27 _____
28 ¹ A courtesy copy of this Joint Proposed Case Management Report and Proposed Briefing Plan was provided to Ormat.

1 (f) No depositions are anticipated.

2 7. The parties do not expect to engage in ESI discovery in this case.

3 8. Proposed Schedule for the Production of the Administrative Record and Briefing on
4 the Merits.

5 This case is brought pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-06, and
6 shall be resolved on cross-motions for summary judgment based on the agency's administrative
7 record, in accordance with Local Rule 16-l(c)(l). The parties jointly propose the following schedule:

8 A. Federal Defendants shall serve the Bates-stamped administrative record on electronic
9 media (such as DVDs or USB drive or over a share service) on all parties and file notice thereof no
10 later than September 15, 2023.

11 B. After Federal Defendants serve the administrative record on all parties, Plaintiffs will
12 notify Federal Defendants of any alleged deficiencies or other disputes regarding the sufficiency of
13 the administrative record by no later than October 13, 2023.

14 C. Federal Defendants will provide a response to Plaintiffs regarding any administrative
15 record issues by October 27, 2023.

16 D. If the parties are unable to resolve any issues related to the sufficiency of the
17 administrative record, the following briefing schedule will apply:

18 i. Plaintiffs' Motion to Supplement or Complete the Administrative Record: due by
19 November 10, 2023.

20 ii. Federal Defendants' Opposition: due by December 1, 2023.

21 iii. Plaintiffs' Reply: due by December 15, 2023.

22 E. Plaintiffs shall file their motion for summary judgment and brief in support of their
23 motion for summary judgment, the following schedule will apply:
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- i. Plaintiffs' Motion for Summary Judgment: due 60 days from the Court's ruling on Plaintiffs' Motion to Supplement or Complete the Administrative Record or, if no such motion is filed, by December 1, 2023.
- ii. Federal Defendants' combined Opposition/Cross-Motion for Summary Judgment: due 60 days from Plaintiffs' Motion for Summary Judgment.
- iii. Plaintiffs' combined Opposition/Reply: due 30 days from Federal Defendants' combined Opposition/Cross-Motion.
- iv. Federal Defendants' Reply: due 30 days from Plaintiffs' combined Opposition/Reply.

F. PARTIES' POSITIONS ON LENGTH OF BRIEFS

Under LR 7-3, motions for summary judgment and responses to motions for summary judgment are limited to 30 pages, excluding exhibits. Replies in support of a motion for summary judgment are limited to 20 pages. The parties agree to comply with these page limits.

G. The parties agree that to avoid redundancy, they will not submit separate detailed statements of fact under Local Rule 56-1 with their summary judgment briefs but instead will include discussions of the facts and references to relevant facts necessary to their arguments being raised in their summary judgment briefs.

H. The parties respectfully request that this Court schedule oral argument on the pending motions at this Court's earliest convenience after the conclusion of briefing.

9. A jury trial has not been requested. The case will be decided on cross motions for summary judgment.

10. The parties believe that the possibility of a settlement is unlikely at this time. One or more of the parties do not intend to consent to proceed before the magistrate judge. Plaintiffs intend on briefing remedies, including vacatur, injunctive relief, and any other requested remedies, in their

1 summary judgment briefing so that the Court may rule on remedies concurrent with summary
2 judgment.

3 11. No party requests a case management conference at this time.

4 DATED this 2nd day of June, 2023.

5 Respectfully submitted,

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IT IS SO ORDERED.

DATED: June 5, 2023.


UNITED STATES MAGISTRATE JUDGE